

REMARKS

All of the rejections of Applicant's claims are, at least in part, based upon the '529 patent of de Keller. In column 4, line 54, de Keller refers to a Table A which has been omitted from de Keller. In other words, de Keller is a defective document because it is incomplete. Applicant objects to the inclusion of de Keller in the office action and demands its immediate withdrawal.

Claims 1-20 have been rejected. Claim 1 has been cancelled and claim 2 has been amended. Claim 2 (Amended) and claims 3-20 remain in the case.

Claim 1 is rejected under 35 U.S.C 103(a) as being unpatentable over de Keller. Claim 1 has been cancelled, thereby obviating the rejection of claim 1.

Claims 2-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Keller in view of 3-5-7. The office action inaccurately states that "3-5-7... makes a payout to a player based upon the rank of the hand." Unlike applicant's invention and a most significant portion of de Keller, in 3-5-7 "Best hand wins." A significant fact is that in a game, such as 3-5-7, because "Best hand wins" **two or more players must play 3-5-7 simultaneously, thereby providing at least two hands.**

In a relevant portion of de Keller, and in a game according to claims 2-16, as amended, wagers are settled through use of a pay table. Because of the pay table, in **de Keller and in the**

game according to claims 2-16 only one player plays at any given time.

The office action states that "[a]n artisan would be motivated to combine de Keller in view of 3-5-7 since multiple wagers would increase the opportunity of larger wagers..." In order to support an allegation of obviousness of claim 2, the 4-step analysis of Section 706.02(j), MPEP is suggested:

1. The prior art teachings relied upon;
2. The difference(s) between the claimed invention and the prior art teachings;
3. The proposed modifications to the prior art teachings required to arrive at the claimed invention; and
4. An explanation as to the source of motivation for such proposed modification.

The artisan's motivation would be very short lived when the four step analysis causes structural differences between 3-5-7 and de Keller to be appreciated.

Like applicant's game, de Keller makes a payout in accordance with a pay table whereas 3-5-7 is a game where "best hand wins". Additionally, de Keller uses three community cards and 3-5-7 does not use community cards. Moreover, applicant's game uses four community cards.

Since applicant's game uses four community cards, de Keller's game uses three community cards and 3-5-7 provides the

"best hand wins" payout, the artisan could not produce a combination of de Keller and 3-5-7 that is germane to a rejection of applicant's claims. Therefore, claim 2 (amended) is allowable over the ground of rejection.

Claim 3 calls for making a three card payout, a five card payout and a seven card payout based upon a rank of a three card hand, the rank of a five card hand and the rank of a seven card hand, respectively. Payout according to rank is nowhere suggested in 3-5-7. The payout according to rank of a three card poker hand is nowhere suggested in de Keller. Therefore claim 3 is allowable over the ground of rejection.

Claims 4 and 5 relate to the dealing of community cards face down and face up, respectively. Since claims 4 and 5 depend from claim 2 (amended) which has been shown to be allowable, claims 4 and 5 are allowable.

Claims 6 and 12 disclose using a joker as a wild card. Claim 6 depends directly from claim 2. Claim 12 is in a chain of dependency from claim 2. Since claim 2 has been shown to be allowable, claims 6 and 12 are allowable.

Claims 7 and 13 provide a bonus payout when a poker hand has a rank higher than a known rank. Claim 7 depends directly from claim 2. Claim 13 is in a chain of dependency from claim 2. Since claim 2 has been shown to be allowable, claims 7 and 13 are allowable.

Claim 11 calls for permitting the player to rescind a seven card wager upon forfeiture of a portion of the seven card wager. In an effort at showing obviousness of claim 11, the office action points out that in 3-5-7 the player can drop out without forfeiting any winnings. In practically all poker games the player can drop out without forfeiting any winnings. However, rescission of a wager accompanied by forfeiture of a portion of the wager is heretofore unknown whereby claim 11 is allowable. Additionally claim 11 is in a chain of dependency from claim 2 which has been shown to be allowable.

Claim 14 calls for:

a player making a seven card Stud Poker wager;

dealing four cards to said player;

dealing three community cards face down;

giving said player an option of making a three card stud wager...;

turning said community cards face up, a three card stud hand being formed;

making a three card payout to said player based upon the rank of said three card hand; and

making a seven card payout to said player based upon a rank of a selected five of said seven cards.

The office action alleges that de Keller and 3-5-7 can form a combination in accordance with claim 14. Since 3-5-7 is a

"best hand wins" game, 3-5-7 probably cannot be combined with de Keller. Additionally, there is nothing in de Keller that suggests using three community cards for a three card poker hand. Therefore, claim 14 is allowable over the ground of rejection.

Claims 15 and 16 call for use of a joker as a wild card and a bonus payout for a player with a poker hand having a rank higher than a known rank, respectively. Since claims 15 and 16 depend from claim 14 which as been shown to be allowable, claims 15 and 16 are allowable.

Claims 17 and 18 are to s method of playing a video game allegedly corresponding in scope to clams 1-16. Since the game is played on a video machine, the "best hand wins" payout concept of 3-5-7 is inapplicable. Moreover, the office action admits that de Keller does not disclose wagering and paying out based on a three card poker hand.

Claim 17 calls for "providing an image of a three card poker hand,..." and "making a three card payout based ...based upon a rank of said three card hand..." Since the "best hand wins" payout concept is inapplicable and de Keller does not disclose wagering and paying out on a three card poker hand, claim 17 is allowable whereby allowance thereof is hereby requested.

Claim 19 calls for "giving a player an option of making a payment representative of a five card wager and a seven card wager;" In an embodiment of Weingardt, the player determines "how

many tokens representing a wager that he will play at the beginning of the hand...If the player wagers between one and five tokens he plays conventional five card poker. If the player wagers six tokens...seven cards can be intermixed to achieve the best...hand that the player can achieve." Therefore, in claim 19 the player has an option of making a wager based upon one event and an option of making a wager based upon another event. Under the most liberal interpretation, Weingardt describes making a wager on either of two events. When the office action states that Weingardt does not provide for two separate payouts, the office action either misses or deliberately overlooks the point that Weingardt does not provide for making the two wagers that would warrant the two separate payouts.

The office action takes the position that all that is necessary to sustain an obviousness rejection of claim 19 is to allege in broad, nonspecific terms, a combination of Weingardt and Jones. It should be understood that claim 19 includes very specific, carefully crafted, steps of:

- giving a player an option of making a payment representative of a five card wager and a seven card wager;

- causing a video screen of the gaming machine to provide initial images of five cards face up;

- said player causing said video screen to replace any of said initial images with images of cards that are face up, thereby providing an image of a five card Draw Poker hand;

- making a Draw Poker payout to said player based upon the rank of said Draw Poker hand, whereby said player's five card wager is settled;

providing images of two additional cards face up,
thereby providing an image of a seven card Stud Poker
hand: and

making a seven card Stud Poker to said player
based upon a rank of five cards of said Stud Poker
hand, whereby said player's seven card wager is
settled.

In order to support an allegation of obviousness of claim

19, the 4-step analysis of Section 706.02(j), MPEP, cited
hereinbefore, is suggested:

For reasons given hereinbefore, reexamination of claim 2
amended, claim 8 (amended), reconsideration of claims 3-7, 9-20
and an early allowance thereof is requested.

Respectfully submitted,

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